

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2932 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

OM PRAKASH GOYAL

Versus

NATIONAL TEXTILE CORPORATION GUJARAT LTD

Appearance:

MR MANOJ N POPAT for Petitioner
MR SI NANAVATI for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 18/02/2000

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution, the petitioner, who was appointed as a General Manager under the National Textile Corporation (respondent herein) as per the appointment order dated 18.12.1986, has challenged the order dated 6.6.1988 (Annexure "E") terminating the petitioner's services.

2. The petitioner was appointed as a General Manager on probation for a period of one year as per the order dated 18.12.1986 (Annexure "A"). The period of probation was for one year, but it was specifically mentioned in the appointment order that the probation period shall be one year during which the petitioner's services may be terminated by one day's notice and that the probation period shall stand extended if the petitioner is not confirmed in service and an order of confirmation in writing is not issued to the petitioner and that on satisfactory completion of the period of probation, the petitioner will be confirmed in service. The petitioner joined the service of the respondent Corporation with effect from 13.2.1987. By the impugned order dated 6.6.1988 (Annexure "E") the petitioner's services are terminated.

3. In this petition, the termination order is challenged on the following grounds :-

- (i) The petitioner had completed the probation period of year year and, therefore, the petitioner became a permanent and confirmed employee of the Corporation after completing one year's service.
- (ii) Even if the petitioner is treated as on probation, the petitioner was entitled to be continued upto 10.2.1989.
- (iii) The impugned order is arbitrary and unreasonable and is an order of penlaty in nature.
- (iv) The Chairman-cum-Managing Director of the Corporation was against the petitioner. Hence, the order is malafide.

4. The petition is contested. Affidavit in reply dated 18.6.1988 is filed by the Manager (Personnel) of the respondent Corporation pointing out that since the terms of the appointment clearly stipulated that the period of probation would stand extended unless the petitioner's services were found to be satisfactory and he was confirmed, the petitioner never became a permanent employee of the respondent-Corporation. It is further pointed out that the performance of the petitioner was not found to be satisfactory inspite of repeated suggestions made to the petitioner to improve his performance. The allegations of mala fides made against the Chairman-cum-Managing Director are denied in paras 8, 9 and 12 of the reply affidavit. Affidavit in rejoinder

is filed by the petitioner.

5. In view of the settled legal position that when an officer is appointed on probation, he is not confirmed in service unless rules prescribe the maximum period of probation and contain a further provision that upon completion of the maximum period of probation, the officer shall be deemed to have been confirmed, the officer continues to remain on probation. In the instant case, the order of appointment itself stipulated that the petitioner shall be deemed to be continuing as a probationer unless a specific order in writing confirming the petitioner in service is passed and no such order of confirmation having been passed, the petitioner remained as an officer on probation. In this view of the matter, it is not possible to accept the contention of the petitioner that the petitioner was a confirmed employee of the Corporation. As per the settled legal position, when the employer finds the services of the probationer as unsatisfactory, the termination on such ground does not constitute any penalty and no departmental inquiry is required to be followed.

6. As regards the allegations of mala fides, apart from the fact that such allegations are extremely vague, the Chairman-cum-Managing Director against whom such allegations are made is not even joined as a party and therefore, the Court would not look into such allegations. As regards the contention urged in the petition that the petitioner was appointed by the Chairman-cum-Managing Director and that the impugned order is passed by the Manager of the respondent Corporation at Ahmedabad, the termination order itself mentions that the impugned order was issued with the approval of the competent authority. The learned counsel for the respondent Corporation states at the hearing of the petition that the impugned order is merely a communication from the Manager (Personnel) pursuant to the decision taken by the competent authority i.e. Chairman-cum-Managing Director of the respondent Corporation.

7. In view of the above, there is no merit in this petition and is accordingly dismissed. Rule is discharged.

February 18, 2000 (M.S. Shah, J.)

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